IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 685 of 1999

with

SPECIAL CRIMINAL APPLICATION No 694 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JIVUBHA VESALI RATHOD

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 685 of 1999
   MR BS PATEL for Petitioner No. 1-2
   MRS RANJAN B PATEL for Petitioner No. 1-2
   MR KT DAVE APP for Respondent No. 1
   MR SAURIN A SHAH for original complainant
2. Special Criminal Application No. 694 of 1999
   MR KT DAVE APP for Petitioner
   MR BS PATEL for Respondents
   MR SAURIN A SHAH for original complainant

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 27/08/2001

COMMON ORAL JUDGEMENT

1. Both these petitions are filed against the common order dated July 30, 1999 recorded in Criminal Revision Application No. 52 of 1999 by the learned Sessions Judge, Kachchh at Bhuj, by which order dated July 22, 1999 passed by the learned Judicial Magistrate, First Class, Mandvi of Kachchh District, in Criminal Case registered at Mandvi Police Station bearing CR No.I-76/1999 came to be modified and both the petitioners of Special Criminal Application No.685 of 1999 were remanded to police custody for a period of three days whereas respondents of Special Criminal Application No. 694 of 1999 were ordered to remain present in the police station for a period of three days from 9 A.M. to 6 P.M.

2. Aggrieved by the aforesaid order of modification, Special Criminal Application No. 685 of 1999 is filed by those two accused who were ordered to be remanded to police custody for a period of three days whereas State of Gujarat has filed Special Criminal Application No. 694 of 1999 against the order by which other four accused were directed to remain present in the police station for a period of three days from 9 A.M. to 6 P.M.

3. I have heard Mr. B.S. Patel, learned advocate for the original accused, who are petitioners of Special Criminal Application No. 685 of 1999 and respondents of Special Criminal Application No. 694 of 1999, Mr. K.T. Dave, learned APP for the respondents of Special Criminal Application No. 685 of 1999 and petitioner of Special Criminal Application No. 694 of 1999 and Mr. Saurin Shah, learned advocate for the original complainant in both the petitions. I have also perused the averments made in both the petitions as well as the impugned orders recorded by the learned Sessions Judge, Kachchh at Bhuj and the learned Judicial Magistrate, First Class, Mandvi.

4. On the facts and circumstances emerging from the record of the case and without entering into the merits of the case, since two years have already elapsed from the date of the order to send the original accused to police remand for three days, I am of the opinion that now no purpose would be served in continuing with the said order because as a result of the continuation of these orders, the bail application preferred by the original accused has not been decided so far. So far as Special Criminal Application No. 694 of 1999 filed by

the State is concerned, four accused were ordered to remain present in the police station for a period of three days from 9 A.M. to 6 P.M. Obviously, therefore, the police must have interrogated them and now no useful purpose would be served by sending them again to police remand. Therefore, in the interest of justice, the orders passed by both the courts below now would not assume any survival value.

5. For the foregoing reasons, Special Criminal Application No. 685 of 1999 succeeds and accordingly it is allowed. The impugned orders are quashed and set aside. Application for police remand is now rejected. Rule is made absolute. So far as Special Criminal Application No. 694 of 1999 is concerned the same is rejected. Rule is discharged. It is directed that all the accused of CR No.I-76 of 1999 registered with Mandvi Police Station, District Kachchh, shall remain present on the date of hearing of the bail application before the concerned Sessions Judge of Kachchh District and the bail application shall be decided in accordance with law without being influenced by the order passed by this Court by which remand application came to be rejected. As requested by Mr. B.S. Patel, learned advocate, direct service is permitted.

27.8.2001. (A.M. Kapadia, J.)

(karan)